No. 80-2018

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In The

Supreme Court of the United States

October Term, 1980

EDWARD THILL,

Petitioner,

vs.

STATE OF NEW YORK,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

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Question Presented

Petitioner suggests, at page *i* of the Petition, that two questions are presented for the Court's consideration. We urge that neither question postulated by petitioner is presented by the proceedings in the State courts, and the threshold question must be:

Did the New York Court of Appeals create new law by its decision in *People v. Friscia** and if so, were any of petitioner's rights affected thereby?

*51 N.Y.2d 845; 433 N.Y.S.2d 754 (1980).

TABLE OF CONTENTS

	Page
Question Presented	*i*
Table of Authorities	*iii*
Statement of the Case	1
ARGUMENT — No due process or other Constitutional issue is presented by the actions of the State courts.	2
CONCLUSION — None of petitioner's Constitutional rights were adversely affected by the state court's decision in this case, and the petition for a writ of certiorari should be denied.	5

TABLE OF AUTHORITIES

Cases:	Page
Boykin v. Alabama, 395 U.S. 238 (1969)	4
People v. Blakely, 34 N.Y.2d 311, 357 N.Y.S.2d 459 (1974)	2, 4, 5
People v. Brothers, 50 N.Y.2d 413, 429 N.Y.S.2d 558 (1980)	4
People ex rel. Franklin v. Warden, 31 N.Y.2d 498, 341 N.Y.S.2d 604 (1973)	3, 5
People v. Friscia, 51 N.Y.2d 845, 433 N.Y.S.2d 754 (1980)	*i*, 2, 4
People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1951)	4
Statutes:	
N.Y. Criminal Procedure Law, article 30	2
N.Y. Criminal Procedure Law, §30.20	3, 4, 5
N.Y. Criminal Procedure Law, §30.30	1, 2, 3, 4, 5
Former N.Y. Code of Criminal Procedure §§8, 668	2, 3, 4

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Statement of the Case

Petitioner was charged with felony drug sale in Monroe County, New York. Before trial, he made a motion to dismiss the indictment because, he alleged, the prosecution had violated New York's "ready trial" rule as found in New York Criminal Procedure Law §30.30 by not preparing the case for trial within six months of his arrest. The trial court denied the motion after making the computations of the applicable time periods. Petitioner then negotiated a reduced plea and was sentenced accordingly.

On appeal, the intermediate appellate court, the appellate division of supreme court, disagreed with the trial court's computations and concluded that the prosecution had not been

ready within six months of the commencement of the action. They reversed the conviction.

The People then appealed to the Court of Appeals, arguing for the first time that by pleading guilty, petitioner had waived his statutory claim under C.P.L. §30.30. The court agreed and reinstated the conviction (the opinion of each court is reproduced in the Appendix to the Petition).

ARGUMENT

No due process or other Constitutional issue is presented by the actions of the State courts.

Petitioner claims his due process rights under the 14th Amendment were violated because New York's highest Court retroactively imposed a new, Court-made law on him to his detriment.

His claim is based on the supposed difference between the decision of the New York Court of Appeals in *People v. Blakely*, 34 N.Y.2d 311, 357 N.Y.S.2d 459, decided in 1974, and its decision in *People v. Friscia*, 51 N.Y.2d 845, 433 N.Y.S.2d 754, decided in 1980. According to petitioner's analysis, the court in *Blakely* said that speedy trial claims could not be waived by a plea of guilty, and in *Friscia* it said that a plea of guilty automatically waives a speedy trial claim.

We believe the two cases deal with different statutes and different legal principles. There was, therefore, no "new law" created by the decision in *Friscia*, and no due process claim is implicated.

New York's Constitution has no provision dealing with a defendant's right to a speedy trial; those rights were protected by statute, formerly in the Code of Criminal Procedure (C.C.P.) §§ 8 and 668, and presently in the Criminal Procedure Law, article 30.

The Criminal Procedure Law (C.P.L.) was enacted in 1970 to replace the Code of Criminal Procedure, to be effective on September 1, 1971 (Laws of 1970, ch. 996).

When the C.P.L. was first enacted, a defendant's speedy trial rights formerly in §§ 8 and 668 of the repealed C.C.P. were provided for in C.P.L. §30.20. At that time there was a §30.30, but it dealt with trial preferences, not speedy trial rights and, as we shall show, was renumbered before it ever took effect.

After the C.P.L. was enacted, but before its effective date, the State's Judicial Conference, an arm of the Courts, acting through its Administrative Board, enacted certain regulations which required that all defendents be brought to trial within a specified period of time. In the case of most felonies, for example, the absolute time limitation was six months. A defendant not brought to trial within the prescribed period was to be released, and the indictment (or other accusatory instrument) would be dismissed.

Before the effective date of these regulations, the legislature enacted the present C.P.L. §30.30, and relocated the subject matter of the former §30.30 to a new subparagraph of §30.20 (Laws of 1972, ch. 184).

The present §30.30, although captioned "Speedy trial; time limitations", is really a ready trial rule. See *People ex rel. Franklin v. Warden,* 31 N.Y.2d 498, at 500, 341 N.Y.S.2d at 605 (1973). Pursuant to §30.30, the prosecutor must prepare his case and announce his readiness for trial within a set time limit. In felony cases, except murder, prosecutors must be ready for trial within six months of the commencement of the criminal action. However, certain periods can be excluded in computing the six-month limitation pursuant to §30.30 subparagraph 4. In this case, the trial judge found that the applicable elapsed time less the excludable period was less than six months, and that therefore the motion to dismiss the indictment must be denied.

The petitioner then pled to a reduced charge,* and on his appeal, the appellate division of supreme court reversed, concluding that the trial judge's computation of the excludable periods was incorrect, and that the prosecution was not ready for trial within six months.

After the appellate division decision, but before a further appeal, the State's highest court, the Court of Appeals, decided *People v. Brothers,* 50 N.Y.2d 413, 429 N.Y.S.2d 558 (1980), in which it strongly hinted that a guilty plea operated as a waiver of §30.30 claims (discussion 50 N.Y.2d at 418). The decision in *People v. Friscia,* 51 N.Y.2d 845, 433 N.Y.S.2d 754 (1980) shortly followed. There, the court specifically held that: ". . . his [i.e., defendant's] plea of guilty operated as a waiver of his statutory right to any dismissal." The court then discussed Friscia's speedy trial claim under C.P.L. §30.20, clearly indicating that such claims were not waived by a plea of guilty. Since §30.20 is the present embodiment of the speedy trial claims raised in *People v. Blakely,* 34 N.Y.2d 311, 357 N.Y.S.2d 459 (1974), the holdings in the two cases, as to that issue, are functionally identical. There was no "new law" created, and there was no due process issue, let alone a due process violation.

Because there is no New York Constitutional provision similar to the Sixth Amendment's speedy trial rights, the New York courts have always treated the statutory speedy trial rights as if they were the functional equivalent of the Sixth Amendment rights. See, generally, *People v. Prosser,* 309 N.Y. 353, discussion at 356, 130 N.E.2d 891 (1951). Unfortunately, the term "speedy trial" is used to mean two different things. In C.P.L. §30.20 (as in its predecessor, C.C.P. §§8 and 668) it is used in the classical Sixth Amendment sense, while in C.P.L. §30.30 the phrase is used as a substitute for "ready for trial."

*As part of the plea process, defendant (petitioner) signed an agreement which included an acknowledgement that the defendant was waiving certain Constitutional rights, pursuant to *Boykin v. Alabama,* 395 U.S. 238 (1969). Naturally, a state statutory claim would not be included in the enumeration of Constitutional rights.

Of course, the two sections work together. Section 30.30 requires that the prosecution not delay in preparing for trial, and §30.20 protects a defendant if, notwithstanding a prosecutor's readiness, the defendant is not actually brought to trial within a reasonable time. *People ex rel. Franklin v. Warden,* 31 N.Y.2d 498, 341 N.Y.S.2d 604 (1973).

That distinction was always present, and we urge that no defendant could logically conclude that the decision in *People v. Blakely,* 34 N.Y.2d 311, 357 N.Y.S.2d 459 (1974) meant that claims under C.P.L. §30.30 were also non-waivable. This is especially so since §30.30 as well as the C.P.L. had not been enacted when the *Blakely* case originally arose.

The state court decision in this case is neither new nor illogical. No Constitutional rights of petitioner were affected by the decision below, and there is no reason to review that decision.

CONCLUSION

None of petitioner's Constitutional rights were adversely affected by the state court's decision in this case, and the petition for a writ of certiorari should be denied.

Respectfully submitted,

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